

REPORT - PLANNING COMMISSION MEETING
June 10, 2004

Project Name and Number: INCLUSIONARY HOUSING ORDINANCE UPDATE (PLN2004-00284)

Applicant: City of Fremont

Proposal: To consider a Zoning Text Amendment modifying provisions of Article 21.7 (Inclusionary Housing) with regard to phasing, alternatives to on-site construction, and subsequent rental of owner-occupied units for affordable units within residential projects, and to correct code references.

Recommended Action: Recommend to the City Council, based on findings

Location: Citywide

Agent of Applicant: Redevelopment Agency Director

Environmental Review: The City Council adopted a Negative Declaration for the Inclusionary Housing Ordinance (PLN2003-00088) on November 12, 2002. The ordinance as proposed to be modified herein falls within the scope of the project analyzed under PLN2003-00088 and would not result in adverse environmental impacts different than those previously analyzed.

Public Hearing Notice: Public hearing notification is applicable. Because this project is a Zoning Text Amendment and therefore potentially affects properties citywide, a Public Hearing Notice consisting of a minimum 1/8-page display advertisement was delivered to The Argus on May 24, 2004 to be published on May 27, 2004. In addition, 59 public hearing notices were mailed as a courtesy to interested parties.

Executive Summary: Fremont's Inclusionary Housing Ordinance was adopted in 2002 and has been in effect now for approximately 18 months. As staff begins to implement the ordinance, it finds that certain provisions require clarification and modification to enable it to respond more effectively to development opportunities. The proposed modifications address project phasing, affordable units proposed as an alternative to on-site construction, and hardships that require affordable ownership units to be rented out for a limited period. Also, staff has noted incorrect references in the ordinance and these should be corrected.

Background and Previous Actions: In January 2001, a City Council Study Session was conducted to launch the City's Housing Element update process. At that meeting, the Council expressed support for the development of an inclusionary housing program for Fremont. In February 2002, the City Council adopted an updated Housing Element, including what is now Implementation Program 16 under Policy 3A, which calls for the development of an Inclusionary Housing Program that would require a certain amount of affordable housing to be created in conjunction with market-rate residential development. On October 24, 2002, the Planning Commission recommended, and on November 12, 2002, the City Council adopted Ordinance No. 2493, the Inclusionary Housing Ordinance, which generally requires that all new residential projects of 7 units or more reserve 15% of all units as affordable.

Project Description: In the approximately 18 months since the Inclusionary Housing Ordinance was adopted, staff has had the opportunity to work with developers on several new residential projects subject to the ordinance, as well as projects where developers voluntarily agreed to be subject to the ordinance. Based on this experience, staff proposes that certain provisions of the ordinance be modified, thereby increasing its practicality and flexibility. The substantive modifications relate to project phasing, the location of affordable units proposed off-site as an alternative to on-site construction of such units, and flexibility in the allowable rents for hardship cases that require affordable ownership units to be rented out for a limited period. Modifying the ordinance as proposed herein will provide the flexibility originally envisioned when the ordinance was adopted and facilitate its implementation. Staff also proposes to amend incorrect code references.

1. Accommodate Phasing Schedules

Section 8-22174(a) of the ordinance currently provides that building permits must be obtained for all required affordable ("inclusionary") units, whether on-site or off-site, before building permits are released for the market-rate units. Certificates of occupancy must also be released for the inclusionary units before they may be released for the market-rate units. This provision can create particular difficulties for phased projects, such as the Mayfield development in Warm Springs, where the inclusionary units are properly spread throughout the project, but the requirement to obtain building permits for all of the inclusionary units before any permits are released for the market-rate units does not practically address phased or sequenced construction where many model types exist. To provide flexibility to this provision and ensure that the inclusionary units can actually be developed, staff proposes that the following underlined language be added to Section 8-22174(a) of the ordinance:

Proposed Amendment to Section 8-22174 (Time Performance Required):

(a) No building permit shall be issued for any market-rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of section 8-22172, or received certification from the city manager or the manager's designee that the permittee has met, or made arrangements satisfactory to the city to meet, an alternative requirement of section 8-22177. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the affordable units required by section 8-22172, or completed corresponding alternative performance under section 8-22177. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide greater public benefit and if an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176 so provides.

2. Alternatives to On-Site Construction

As currently written, the off-site construction portion of Section 8-22177 (Alternatives to On-Site Construction) has proved problematic because of the requirement that off-site units cannot be physically contiguous to the market-rate project and because the off-site units must receive certificates of occupancy before any market-rate units receive certificates of occupancy. Staff has found that these provisions can be unworkable when the off-site units are part of an adjacent large-scale affordable housing complex constructed by another developer, and because timing, funding, and project approvals may vary for each project. Staff proposes the following underlined language to address these issues:

Proposed Amendment to Section 8-22177 (Alternatives to On-Site Construction):

(b) *Off-site construction.* Construct, or make possible construction by another developer of, units not physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the city determines this will provide greater public benefit and if an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176 so provides) and equal or greater in number to the number of affordable units required under section 8-22174. Off-site construction pursuant to this subsection shall be approved only if:

- (1) Approval has been secured for the off-site units not later than the time the residential project is approved and completion of the off-site units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the affordable units; provided that the time requirements set forth in this subsection for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors in a residential project for the off-site units, if the city determines this will provide greater public benefit, and if an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176 so provides;

3. Correction to Reference in Subsection (j) of Section 8-22171 (Definitions)

Section 8-22171(j) (Definitions) of the ordinance has an incorrect reference where it refers to the "Section 8-22177 Program" of the United States Housing Act of 1937, instead of the "Section 8" Program. This appears to be a typographical error that can be corrected by eliminating the reference to "22177", as follows:

Proposed Amendment to Section 8-22171(j) (Household Income):

The combined adjusted gross income for all adult persons living in a living unit as calculated for the purpose of the Section 8-~~22177~~ Program under the United States Housing Act of 1937, as amended, or its successor.

4. Address Hardship Cases in Section 8-22176 (Continued Affordability; City Review of Occupancy) and Correct Cross-Reference

Section 8-22176(b) provides that originally owner-occupied inclusionary units, if subsequently rented out during the term of their inclusionary housing regulatory agreement, may only be rented to low-income tenants. There may be hardship cases, however, where units must be rented for a limited period to non-low income tenants, such as cases where the property owner is called up on short notice to a tour of duty in the armed forces. Staff proposes that renting units out in such cases at market rates be allowed subject to the provisions of the regulatory agreement. The first sentence of this subsection also has an incorrect cross-reference; so the subsection should be amended to provide the correct cross-reference, as well as to address hardship cases, as follows:

Proposed Amendment to Section 8-22176(b):

In the case of units which are initially owner-occupied, the documents required by subsection (a) may not authorize subsequent rental occupancy on terms other than those provided in ~~section 8-22175(b) or 8-22175(c)~~ section 8.22175(a), except in hardship cases as provided in an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176. For rented affordable units, the documents required by subsection (a) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

Meetings with Stakeholders and Study Sessions: In conjunction with the original Inclusionary Housing Ordinance, over a 5-month period, staff conducted a series of meetings with stakeholders including builders and residential developers, community representatives and affordable housing advocates. In addition, both the Planning Commission and the City Council held study sessions prior to their hearings on the ordinance in October and November 2002. The stakeholders with whom staff met originally have been notified of the proposed changes as well.

Environmental Review: The City Council adopted a Negative Declaration for the Inclusionary Housing Ordinance (PLN2003-00088) on November 12, 2002. The ordinance as modified falls within the scope of the project analyzed under PLN2003-00088 and would not result in adverse environmental impacts different than those previously analyzed.

Enclosures: Zoning Ordinance, Article 21.7 (Inclusionary Housing)
Initial Study and Negative Declaration for PLN 2003-00088

Exhibits: Exhibit "A" (Zoning Text Amendment)

Recommended Actions:

1. Hold public hearing.
2. Recommend that the City Council find that the initial study conducted for PLN 2003-00088 evaluated the potential of the Inclusionary Housing Ordinance to cause effects that, individually or cumulatively, are adverse to wildlife resources; that there is no evidence the project would have the potential for an adverse effect on wildlife. Further recommend that the City Council find that the proposed ordinance modifications (PLN 2004-00284) will not cause any new or different impacts, that the Negative Declaration for the original adoption of the Inclusionary Housing Ordinance on November 12, 2002 therefore properly addresses the proposed modifications set forth in the Inclusionary Housing Update, and that therefore no further environmental review is needed.
3. Recommend that the City Council find that the proposed Inclusionary Housing Ordinance Update (PLN 2004-00284) is in conformance with the relevant provisions contained in the City's General Plan. The Inclusionary Housing Ordinance, as modified, will further the implementation of Policy 3A (Implementation Program 16) of the adopted Housing Element.
4. Recommend that the City Council find that the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment because it is needed to ensure that projects with inclusionary dwelling units can actually be developed in phased projects, to ensure that off-site inclusionary units can be accommodated in adjacent projects where there is an opportunity to do so and where doing so would provide the greatest public benefit, and to alleviate hardships that require owners of affordable ownership units to rent the units out.
5. Recommend the proposed Inclusionary Housing Ordinance Update (PLN 2004-00284) to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).

EXHIBIT "A"
Zoning Text Amendment

INCLUSIONARY HOUSING ORDINANCE UPDATE (PLN2004-00284)

Note: Language to be added to the subject ordinance is underlined. Language to be removed is ~~struck~~.

Section 1:

Subsection (j) of Section 8-22171 (Definitions) of Article 21.7 (Inclusionary Housing) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(j) *Household income.* The combined adjusted gross income for all adult persons living in a living unit as calculated for the purpose of the ~~Section 8-22177~~ Program under the United States Housing Act of 1937, as amended, or its successor.

Section 2:

Subsection (a) of Section 8-22174 (Time Performance Required) of Article 21.7 (Inclusionary Housing) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(a) No building permit shall be issued for any market rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of section 8-22172, or received certification from the city manager or the manager's designee that the permittee has met, or made arrangements satisfactory to the city to meet, an alternative requirement of section 8-22177. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the affordable units required by section 8-22172, or completed corresponding alternative performance under section 8-22177. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide greater public benefit and an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176 so provides.

Section 3:

Subsection (b) of Section 8-22176 (Continued Affordability; City Review of Occupancy) of Article 21.7 (Inclusionary Housing) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

(b) In the case of units which are initially owner-occupied, the documents required by subsection (a) may not authorize subsequent rental occupancy on terms other than those provided in ~~section 8-22175(b) or 8-22175(c)~~ section 8-22175(a), except in hardship cases as provided in an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176. For rented affordable units, the documents required by subsection (a) shall provide for continued occupancy for limited periods by households occupying the units, whose incomes increase during their occupancy so that they exceed the maximum otherwise permitted for the unit.

Section 4:

Subsection (b) of Section 8-22177 (Alternatives to On-Site Construction) of Article 21.7 (Inclusionary Housing) of Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

- (b) *Off-site construction.* Construct, or make possible construction by another developer of, units not physically contiguous to the market-rate units (or units that are physically contiguous to the market-rate units if the city determines this will provide greater public benefit and if an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176 so provides) and equal or greater in number to the number of affordable units required under section 8-22174. Off-site construction pursuant to this subsection shall be approved only if:
- (1) Approval has been secured for the off-site units not later than the time the residential project is approved and completion of the off-site units is secured by a requirement that final inspections for occupancy for the related market-rate units be completed after those for the affordable units; provided that the time requirements set forth in this subsection for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, financing requirements, or other factors in a residential project for the off-site units, if the city determines this will provide greater public benefit, and if an inclusionary housing regulatory agreement acceptable to the city manager or the city manager's designee pursuant to section 8-22176 so provides;
 - (2) The off-site units will be greater in number, larger or affordable to households with lower incomes than would otherwise be required in section 8-22172;
 - (3) Financing or a viable financing plan is in place for the off-site units; and
 - (4) In the event the off-site units receive any public assistance, the developer of the residential project will contribute to the off-site units economic value equivalent to the value of making on-site units in the developer's residential project affordable.

The city may require that completion of off-site units shall be further secured by the developer's agreement to pay an in-lieu fee in the amount due under subsection (d) in the event the off-site units are not timely completed.